

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

JANUARY TERM, 1904.

No. 1385.

262

**ROBERT Y. SLATER AND CHARLES W. SLATER,
APPELLANTS,**

vs.

**CORNELIUS W. VAN DER HOOGT AND JEAN P.
ANDRÉ MOTTE.**

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED DECEMBER 14, 1903.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1904.

No. 1385.

ROBERT Y. SLATER AND CHARLES W. SLATER,
APPELLANTS,

vs.

CORNELIUS W. VAN DER HOOGT AND JEAN P.
ANDRÉ MOTTU.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print
Caption.....	<i>a</i>	1
Declaration.....	1	1
Bill of particulars.....	2	2
Exhibit A.....	3	2
Affidavit of Cornelius W. Van der Hoogt.....	4	3
Pleas and affidavit.....	6	4
Motion for judgment.....	10	6
Judgment and appeal.....	11	7
Memorandum: Appeal bond filed.....	12	7
Clerk's certificate.....	13	8

In the Court of Appeals of the District of Columbia

ROBERT Y. SLATER ET AL., Appellants,
vs.
CORNELIUS W. VAN DER HOOGT ET AL. } No. 1385.

a Supreme Court of the District of Columbia.

CORNELIUS W. VAN DER HOOGT and JEAN P. }
André Mottu, Plaintiffs, }
vs. } No. 46245. At Law.
ROBERT Y. SLATER and CHARLES W. SLATER, }
Defendants. }

UNITED STATES OF AMERICA, { ss:
District of Columbia, }

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration.*

Filed May 27, 1903.

In the Supreme Court of the District of Columbia.

CORNELIUS W. VAN DER HOOGT and JEAN P. }
André Mottu, Plaintiffs, }
vs. } At Law. No. 46245.
ROBERT Y. SLATER and CHARLES W. SLATER, }
Defendants, }

The plaintiffs, Cornelius W. Van der Hoogt and Jean P. André Mottu, sue the defendants, Robert Y. Slater and Charles W. Slater; For money payable by the defendants to the plaintiffs for goods sold and delivered by the plaintiffs to the defendants; and for work done and materials provided by the plaintiffs for the defendants at their request; and for money lent by the plaintiffs to the defendants; and for money paid by the plaintiffs to the defendants at their

request; and for money received by the defendants for the use of the plaintiffs; and for money found to be due from the defendants to the plaintiffs on accounts stated between them. And the plaintiffs claim fifteen hundred dollars (\$1500.00) with interest from the date of the institution of this suit, according to the particulars of demand hereto annexed, besides costs.

NEWTON & GILLET,
WALTER C. CLEPHANE,
Attorneys for Plaintiffs.

2 The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

NEWTON & GILLET,
WALTER C. CLEPHANE,
Attorneys for Plaintiffs.

Bill of Particulars.

Filed May 27, 1903.

Robert Y. Slater and Charles W. Slater to C. W. Van der Hoogt and J. P. André Mottu, debtors.

To money loaned the said Slaters by the said Van der Hoogt and Mottu on the 8th day of April, 1901..... \$1,500.00

EXHIBIT A.

Agreement.

Filed May 27, 1903.

This agreement made this 8th day of April, 1901, by and between Robert Y. Slater and Chas. W. Slater of the city of Washington, D. C., as parties of the first part, and C. W. Van der Hoogt and J. P. André Mottu, as parties of the second part. Witnesseth:

That whereas, the said parties of the first part have this day sold and assigned to the said parties of the second part, tax certificate dated April 7th, 1898, on north part of lot 8, square 457, city of Washington, D. C., for the sum of \$1500, which said sale and assignment is made as security for the repayment of the said sum of \$1500.

Now therefore, it is hereby agreed on the part of said parties of the second part, that they will upon the repayment of the said sum of \$1500. together with 15% interest thereon, re-assign, the said tax certificate to the said parties of the first part; and it is hereby

agreed on the part of the said parties of the first part, that they will in addition to the repayment of the said money and interest thereon, pay over to the said parties of the second part, two-thirds of the profits that shall be derived from the disposition of the said tax certificate by redemption of the same by the fee owners of the property covered thereby, or a sale of the property thereunder.

Witness the hands and seals of the said parties hereto, the day and year first above written.

ROBERT Y. SLATER.
CHARLES W. SLATER.
C. W. VAN DER HOOGT.
J. P. ANDRE MOTTU.

Witness:

E. L. CRAIGEN.

4

Affidavit.

DISTRICT OF COLUMBIA, ss:

Cornelius W. Van der Hoogt, being first duly sworn, deposes and says that he is one of the parties named as plaintiffs in the declaration hereunto attached, in which declaration Robert Y. Slater and Charles W. Slater are named as parties defendant; that he is the agent for the purpose of making this affidavit of the said Jean P. André Mottu also named as one of the plaintiffs in said declaration; that affiant has personal knowledge that the facts stated in this affidavit are true; that the cause of action of the said parties named as plaintiffs against the said Slaters is for money loaned and advanced to the said Slaters at their request by the said parties named as plaintiffs on or about the eighth day of April, A. D. 1901.

Affiant says that on or about the date last aforesaid he and the said Mottu entered into a written agreement with the said Slaters, a true and accurate copy of which is hereunto attached and marked "Exhibit A" which said agreement was duly signed and delivered by the said Slaters, Mottu and affiant; that pursuant to said written agreement affiant and the said Mottu paid to the said Slaters at their request the sum of fifteen hundred dollars (\$1500) in cash, and received from the said Slaters as security for the repayment of said sum a certificate signed by the collector of taxes of the District of Columbia, dated April 7th, A. D. 1898, certifying that under the directions of the Commissioners of said District, there had been sold on the date last aforesaid at public auction at the office of the collector of taxes of said District, the following described property, viz: "Part of lot 8 & imp. in square numbered 457, assessed in the name of Johnson Hellen, for taxes levied and in arrears on the first day of July, A. D. 1897, penalties, interest and costs, as follows, to wit: Taxes due District of Columbia for fiscal year ending June 30th, A. D. 1897, \$201.46; penalties thereon, \$28.20; advertisement, \$1.20; total \$230.86; and

5

that Robert Y. Slater, being the highest bidder, became the purchaser thereof." Affiant further says that the transaction herein referred to consisted simply of a loan of money by the said Mottu to the said Slaters, and that no time was stipulated for the repayment of said loan.

Affiant further says that he is informed and believes and so believing avers that the tax certificate hereinbefore referred to is absolutely void and worthless and of none effect, by reason of the failure of the Commissioners of the District of Columbia to properly describe the property alleged to have been sold as aforesaid, and to comply with the statutory requirements necessary to render valid the alleged sale aforesaid.

Affiant further says that he has made demand upon the said Slaters for the repayment of said loan but said demand has been refused; and that there is now justly due to him and to the said Mottu, by the said Slaters, exclusive of all set-offs and just grounds of defense, the sum of fifteen hundred dollars (\$1500.00) with interest from the date of the filing of this suit.

CORNELIUS W. VANDERHOOGT.

Subscribed and sworn to before me this twenty-seventh day May, A. D. 1903.

[SEAL.]

C. W. SIMPSON,
Notary Public, D. C.

6

Pleas and Affidavit.

Filed June 19, 1903.

In the Supreme Court of the District of Columbia.

CORNELIUS W. VAN DER HOOGT ET AL., Plain-	} At Law. No. 46245.
tiffs,	
vs.	
ROBERT Y. SLATER ET AL., Defendants.	

Now come the defendants Robert Y. Slater and Charles W. Slater, by their attorneys, Hufty & Hufty, and for pleas to the declaration filed herein say:

1. That they are not indebted as alleged.
2. That they did not undertake and promise as alleged.

HUFTY & HUFTY,
Attorneys for Defendants.

7 In the Supreme Court of the District of Columbia.

CORNELIUS W. VAN DER HOOGT ET AL.,	} At Law. No. 46245.
Plaintiffs,	
vs.	
ROBERT Y. SLATER ET AL., Defendants.	

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me Lucas P. Loving, a notary public in and for the District of Columbia, Charles W. Slater and Robert Y. Slater, who after first being duly sworn depose and say that they are the parties named as defendants in the above entitled cause in which Cornelius W. Van der Hoogt and Jean P. André Mottu are named as plaintiffs; that they are not indebted to the plaintiffs in the sum claimed by said plaintiffs in the declaration and particulars of demand filed herein, or in any sum whatsoever; deponents further say that on or about April 8, 1901, they were the owners and holders of a certain tax sale certificate signed by the collector of taxes of the District of Columbia, dated April 7, 1898, certifying that under the direction of the Commissioners of said District there had been sold on the date last aforesaid at public auction at the office of the collector of taxes of said District, part of lot 8, and improvements in square numbered 457, assessed in the name of Johnson Hellen, for taxes levied and in arrears on the first day of July 1897, penalties, interest and costs, as follows, to wit: Taxes due the District of Columbia for fiscal year ending June 30, 1897, \$201.46, penalties thereon, \$28.20; advertisement, \$1.20, total \$230.86, said certificate further showing that the

8 sale of said real estate by reason of the default in the payment of said taxes, penalties and costs, was sold to Robert Y. Slater, he being the highest bidder; further that on or about said date of April 8, 1901, defendants being the owners and holders of said certificate as aforesaid, entered into an agreement with the plaintiffs herein, under which agreement it was arranged, understood and agreed, between the plaintiffs and defendants, that in consideration of the said plaintiffs paying to deponents, the defendants herein, the sum of fifteen hundred (\$1500.) dollars, that the said certificate should be assigned to the plaintiffs and be treated as a partnership asset under the following arrangement, which was between the plaintiffs and defendants mutually agreed upon, that is to say, when a sale of said certificate was made or of the interest in the property thereunder, before any division of profits of the partnership enterprise was made, that the plaintiffs be first re-imbursed said sum of fifteen hundred (\$1500.00) dollars together with 15% interest thereon, and then after deducting the said fifteen hundred dollars and interest from the proceeds of such sale, the plaintiffs

should receive two-thirds ($\frac{2}{3}$) of the net profits and the defendants one-third ($\frac{1}{3}$) or the balance thereof.

Deponents further say that the said plaintiffs paid said sum of fifteen hundred (\$1500.00) dollars as a consideration for their being allowed said interest in the net proceeds of the sale of said certificate after being reimbursed the sum of fifteen hundred (\$1500.00) dollars and interest, and the said certificate was assigned and delivered to them as security and to protect them in the carrying out of said agreement by the defendants when the sale afore-
 9 said was made; deponents further say that no time for payment of said sum was made or provided for, for the reason that there was no loan to them, and it was impossible to know when said certificate could be realized on, but that under said agreement there was to be no division of profits until plaintiffs were first reimbursed said sum paid by them and interest, whenever a sale of certificate or of the interest in said real estate secured thereunder was made. Deponents further say that the contract entered into between the plaintiffs and them is truly set out in Exhibit "A" of said declaration. Deponents further say that said sale is not absolutely void and worthless and of no effect; but is a subsisting lien on said real estate.

ROBT Y. SLATER.
 CHAS. W. SLATER.

Subscribed and sworn to before me this 19th day of June, A. D. 1903.

[SEAL.]

LUCAS P. LOVING,
Notary Public, D. C.

10

Motion for Judgment under 73rd Rule.

Filed June 23, 1903.

In the Supreme Court of the District of Columbia.

CORNELIUS W. VAN DER HOOGT ET AL.,
 Plaintiffs,

vs.

ROBERT Y. SLATER ET AL., Defendants.

} At Law. No. 46245.

Come now the plaintiffs and move that this honorable court grant a judgment in favor of the plaintiffs for want of a sufficient affidavit of defence, upon the ground that the defendants have, in their affidavit of defence merely stated their construction of the contract sued upon, whereas the plaintiffs contend that the legal construction of said contract is as claimed by the plaintiffs in the affidavit of merits.

NEWTON & GILLET &
 WALTER C. CLEPHANE,
Attorneys for Plaintiffs.

Take notice that on the first motion day, occurring two days after the service hereof, at the hour of 10 o'clock a. m., or as soon thereafter as counsel can be heard, we shall call the motion of which the above is a copy to the attention of the chief justice of the supreme court of the District of Columbia and ask for judgment thereupon.

NEWTON & GILLETT &
WALTER C. CLEPHANE,
Attorneys for Plaintiffs.

To Messrs. Hufty & Hufty, attorneys for defendants.

11 Supreme Court of the District of Columbia.

FRIDAY, October 16th, 1903.

Session resumed pursuant to adjournment, Hon. Harry M. Cla-
baugh, chief justice, presiding.

CORNELIUS W. VAN DER HOOGT and JEAN P. André Mottu, Plaintiffs,	} No. 42245. At Law.
vs.	
ROBERT Y. SLATER and CHARLES W. SLATER, Defendants.	

Upon consideration of the motion filed herein June 23rd, 1903, on behalf of the plaintiffs by their attorneys Messrs. Newton & Gillett and Walter C. Clephane for judgment for want of a sufficient affidavit of defense, it is considered that the same be granted; whereupon it is considered and adjudged that the plaintiffs herein recover of the defendants herein the sum of fifteen hundred (\$1500) dollars with interest thereon, from the 27th day of May, 1903, being the money payable by said defendants to said plaintiffs by reason of the premises, together with their costs of suit to be taxed by the clerk, and have execution therefor. Thereupon the defendants by their attorneys in open court, note an appeal to the Court of Appeals of the District of Columbia.

Further upon consideration of the plaintiffs' motion filed herein June 25th, 1903, for security for costs, it is ordered that said motion be, and the same is hereby overruled.

12 *Memorandum.*

October 31, 1903.—Appeal bond filed.

Order for Transcript.

Filed December 2, 1903.

In the Supreme Court of the District of Columbia, the 2nd Day of
December, 1903.

CORNELIUS W. VAN DER HOOGT ET AL. }
vs. } At Law. No. 46245.
 ROBERT Y. SLATER ET AL. }

The clerk of said court will please prepare transcript of record in above case consisting of the following papers :

Declaration; bill of particulars, Exhibit "A;"

Affidavit of plaintiffs;

Pleas :

Affidavit of defendants & judgment.

HUFTY & HUFTY,
Attorney- for Defendants.

13 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 12, inclusive, to be a true and correct transcript of the record, as per rule 5 of the Court of Appeals of the District of Columbia, in cause No. 46,245, at law, wherein Cornelius W. Van der Hoogt *et al.* are plaintiffs and Robert Y. Slater *et al.* are defendants, as the same remains upon the files and are of record in said court.

Seal Supreme Court
of the District of
Columbia.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1385. Robert Y. Slater *et al.*, appellants, *vs.* Cornelius W. Van der Hoogt *et al.* Court of Appeals, District of Columbia. Filed Dec. 14, 1903. Robert Willett, clerk.

